



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER OF PATENTS AND TRADEMARKS  
Washington, D.C. 20231  
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/036,236	03/06/1998	DAVID M. OLIVER	005-905-300	5721

20433 7590 01/15/2002

BLODGETT BLODGETT  
43 HIGHLAND STREET  
WORCESTER, MA 016092797

EXAMINER

THOMPSON JR, FOREST

ART UNIT

PAPER NUMBER

2165

DATE MAILED: 01/15/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No. <b>09/036,236</b>	Applicant(s) <b>Oliver et al.</b>	
	Examiner <b>Forest Thompson Jr.</b>	Art Unit <b>2165</b>	

*— The MAILING DATE of this communication appears on the cover sheet with the correspondence address —*

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE three MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

1)  Responsive to communication(s) filed on 1/5/01

2a)  This action is **FINAL**.      2b)  This action is non-final.

3)  Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle* 1835 C.D. 11; 453 O.G. 213.

**Disposition of Claims**

4)  Claim(s) 1-80 is/are pending in the application

4a) Of the above, claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

5)  Claim(s) \_\_\_\_\_ is/are allowed.

6)  Claim(s) 1-80 is/are rejected.

7)  Claim(s) \_\_\_\_\_ is/are objected to.

8)  Claims \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

9)  The specification is objected to by the Examiner.

10)  The drawing(s) filed on \_\_\_\_\_ is/are objected to by the Examiner.

11)  The proposed drawing correction filed on 10/7/00 is: a)  approved b)  disapproved.

12)  The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. § 119**

13)  Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).

a)  All b)  Some\* c)  None of:

1.  Certified copies of the priority documents have been received.
2.  Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3.  Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\*See the attached detailed Office action for a list of the certified copies not received.

14)  Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

**Attachment(s)**

15) <input type="checkbox"/> Notice of References Cited (PTO-892)	18) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____
16) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)	19) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)
17) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s). <u>13</u>	20) <input type="checkbox"/> Other: _____

Art Unit: 2765

## **DETAILED ACTION**

### ***Response to Amendment***

1. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action (See Serial No.09/036,236, Papers #4 and Paper #11). The text of those sections of Title 35, U.S. Code not otherwise provided in a prior Office action will be included in this action where appropriate.
  
2. This action is responsive to the Continued Prosecution Application (CPA) filed 05 January 2001. Applicant also requested multiple suspensions of prosecution (see Papers #14 & #18), which have since expired. His latest request for suspension, filed on 09/24/2001 (see Paper #25) was denied (see Paper #26). Therefore, the application is being examined, based on the latest amendment submitted (see Paper #8).
  
3. The First Action mailed on 03 June 1999 (see Paper #4) rejected all claims in the original application. The Final Action mailed on 07 December 1999 (see Paper #11) rejected all claims as amended in amendments A and B (see Papers # 7 & 8). No other amendment has been filed. **The rejections presented in the First Action and the Final Action are maintained**, and are repeated below for the claims as amended.

---

**First Action (rejections repeated):**

Art Unit: 2765

*Drawings*

4. This application has been filed with informal drawings which are acceptable for examination purposes only. Formal drawings will be required when the application is allowed because of the reasons set forth on the PTO-948 Form enclosed.

*Claim Rejections - 35 U.S.C. § 103*

5. Claims 1, 3-7, 11-18, 20-24, and 28-34 are rejected under 35 U.S.C. 103(a) as being unpatentable over **Teper et al.** (Patent No. 5,815,665).

As per claim 1, **Teper et al.** teach:

- a mechanism for sharing client information and charges among a plurality of service providers (col. 6 lines 21-34; col. 8 lines 63-67; col. 9 lines 1-8);
- a client who is registered with one of the service providers and is allowed to access the resources of the other service providers (col. 5 lines 30-37 and 45-48; col. 6 lines 1-33);
- a settling means adapted to allow the system to settle accounts among service providers (col. 6 lines 4-13, 22-34 and 46-49);
- a sharing means adapted to allow the system to allow the providers to share users without requiring an open account for each user at each provider (col. 6 lines 38-67);
- a verification means including a token and an authentication server adapted to allow each provider to determine if a particular client is a member of the system, verify that the client has

Art Unit: 2765

authenticated at his home provider, and determine this client's access or service privileges and criteria (col. 5 lines 30-37 and 45-48; col. 6 lines 53-61).

As per claim 1, **Teper et al.** does not teach, explicitly, a payment means adapted to assure that the outside providers are then paid for that access through the system. However, **Teper et al.** teaches payment for these services by the user is to the Online Broker, who settles accounts billed by the Service Providers to authorized users (Col. 2 lines 32-38 and 62-65; col. 3 lines 19-41; col. 4 lines 22-27; col. 6 lines 4-13, 22-34 and 37-49). Also, **Teper et al.** (col. 15 lines 11-15) incorporates by reference **Reeder**, U.S. Patent No. 5,852,812, "Billing System For A Network" which teaches a payment means that relies on a centralized Online Broker site to handle billing matters for online services purchased by users from Service Providers. Payment for these services by the user is to the Online Broker, who pays Service providers for services billed by the Service Providers to users (**Reeder**, col. 6 lines 9-18). Therefore, it would have been obvious to one skilled in the computer and electronic commerce art at the time the invention was made to use the teachings of **Teper et al.** and **Reeder** to incorporate the payment function at an Online Broker to receive payment from the user for the services provided, and to pay the individual Service Providers accessed and used by the user (for their services during an online session) from the combined payment that the Online Broker receives from the user, because of the obvious advantages of time, expense and convenience of the user submitting payment information only once during an online session, the Online Broker processing only one payment (e.g., a credit card

Art Unit: 2765

payment) from the user for the services received by the user during one online session from all Services Providers and the Online Broker, and the Service Providers not being required to maintain complete user data files for access authorization and billing information for each user.

As per claim 3, **Teper et al.** teach one member of the system may instantaneously configure the form and substance of services or goods across a data network provided to different or unique clients in response to data about the client provided by the system along with the client's request for service (col. 3 lines 65-67; col. 4 lines 1-6).

As per claim 4, **Teper et al.** teach one member of the system may instantaneously determine whether or what type or form of service or goods across a data network to provide to different or unique clients of the system based upon data about the client provided along with the client's request for service (col. 3 lines 65-67; col. 4 lines 1-6).

As per claim 5, **Teper et al.** teach multiple members of the system may aggregate, transfer and share data about the clients of the system (col. 8, lines 63-67; col. 9 lines 1-15).

As per claim 6, **Teper et al.** teach a client of the system may request access to, review of, or purchase of resources or goods across a data network of members of the system on the basis of specific attributes of the client (fig. 2; col. 9 lines 9-15).

Art Unit: 2765

As per claim 7, **Teper et al.** does not teach explicitly a provider of service under the system provides a client's preference, pricing and service-class information to a common service point in exchange for an authenticatable token, which the service provider then provides to its client (fig. 4; col. 15 lines 21-51 and 57-61; col. 17 lines 64-67; col. 18 lines 1-17). However, **Teper et al.** does teach a provider of service under the system provides a client's preference, pricing and service-class information to a common service point in exchange for an authenticatable token, which the service provider then maintains for its client (fig. 4; col. 15 lines 21-51 and 57-61; col. 17 lines 64-67; col. 18 lines 1-17). In this configuration, the user connects to other service providers through its "home" service provider which passes the token to other service providers as the user accesses them through the auspices of its "home" service provider which maintains the user's token(s). This configuration is similar to that stated in the claim, with the principal difference being a "home" service provider (rather than the user directly) maintaining the user's token, and then connecting and transferring the token to selected service provider when the user attempts to connect to this selected service provider through his "home" service provider. The functionality of the connection for purposes of accessing service providers is the same. Therefore, it would have been obvious to one of ordinary skill in the computer and electronic commerce art at the time of the invention that the use of a token could simplify the connectivity process and provide some protection for the user's data provided to the user's "home" service provider by the user, because only selected components of the user's data (e.g., name, address, or

Art Unit: 2765

other data) need to be transmitted, while selected components of the data (e.g., user's credit card ID) need never be transmitted over unsecured communications paths.

As per claim 11, **Teper et al.** teach collecting and storing at a common service point discrete records of access by clients to resources and goods across a data network of multiple members of the service (col. 3 lines 31-41);

As per claim 12, **Teper et al.** teach discrete records are instantaneously sorted and stored in databases according to the identity of the service provider of the individual client whose activity resulted in the record being produced (col. 3 lines 41-44).

As per claim 13, **Teper et al.** teach collecting and aggregating records of financial charges for access to, review or acquisition of services or goods across a data network (col. 3 lines 41-44);

As per claim 14, **Teper et al.** teach said token is only "read" by the authentication server (Fig. 6; col. 3 lines 19-25; col. 15 lines 57-61; col. 16 lines 19-24).

Art Unit: 2765

As per claim 15, **Teper et al.** teach enabling an initiating Internet World Wide Web host to present in HyperText Markup Language (HTML) "hypertext links" which address services or goods available from multiple other receiving World Wide Web sites (fig. 4; col. 16 lines 48-59).

As per claim 16, **Teper et al.** teach a sequence means adapted for obtaining, transferring and maintaining among multiple network clients a unique alphanumeric sequence associated with a specific digital information resource or object (col. 3 lines 31-44).

As per claim 17, **Teper et al.** teach a sequence means adapted for obtaining, transferring and maintaining among multiple network clients and their server a dynamically updated record of funds encumbered by a network user for the purchase of a digital information resource or resources (col. 3 lines 35-41).

Claim 18 is written as a method and contains essentially the same limitations as claim 1; therefore, the same rejection is applied.

Claim 20 is written as a method and contains essentially the same limitations as claim 3; therefore, the same rejection is applied.

Claim 21 is written as a method and contains essentially the same limitations as claim 4; therefore, the same rejection is applied.

Art Unit: 2765

Claim 22 is written as a method and contains essentially the same limitations as claim 5; therefore, the same rejection is applied.

Claim 23 is written as a method and contains essentially the same limitations as claim 6; therefore, the same rejection is applied.

Claim 24 is written as a method and contains essentially the same limitations as claim 7; therefore, the same rejection is applied.

Claim 28 is written as a method and contains essentially the same limitations as claim 11; therefore, the same rejection is applied.

Claim 29 is written as a method and contains essentially the same limitations as claim 12; therefore, the same rejection is applied.

Claim 30 is written as a method and contains essentially the same limitations as claim 13; therefore, the same rejection is applied.

Claim 31 is a duplicate of claim 14 and contains the same limitations as claim 14; therefore, the same rejection is applied.

Claim 32 is written as a method and contains essentially the same limitations as claim 15; therefore, the same rejection is applied.

Claim 33 is written as a method and contains essentially the same limitations as claim 16; therefore, the same rejection is applied.

Claim 34 is written as a method and contains essentially the same limitations as claim 17; therefore, the same rejection is applied.

Art Unit: 2765

6. Claims 2 and 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over **Teper et al.** (Patent No. 5,815,665) as applied to claim 1 above, and further in view of **Reeder** (Patent No. 5,852,812) and **Reuhl et al.** (Patent No. 5,873,069).

As per claim 2, **Teper et al.** does not explicitly teach the owner of goods may sell access to those goods across a data network such that the owner may instantaneously and simultaneously display across the network multiple differing prices of the same good or classes of goods depending upon the alternative pricing requirements of other clients of the system as transferred by the system (col. 4 lines 43-46; col. 5 lines 49-55; col. 6 lines 21-34; col. 8 lines 63-66).

However, **Reeder** teaches

- a series of customers are linked through a gateway to a host data center (fig. 2 [12a, 12b, 12c, 14]; col. 5 lines 6-7);
- the host data center communicates with several outside services (col. 5 lines 11-12);
- the host data center also communicates with a billing services center which can provide invoices (col. 5 lines 26-27);
- the host data center can also communicate with remote data centers so that events that occur on the remote data centers can be communicated to the host data center for processing (col. 5 lines 44-47);
- content providers can provide services to customers attached to the host data center (col. 6 lines 5-7);
- content providers charge an additional fee for access to their services (col. 6 lines 9-10);

Art Unit: 2765

-the owner of the host data center collects money from the customers for the services provided by the content provider, and the owner of the host data center pays royalties to the content provider (col. 6 lines 9-19).

Since **Reeder** is incorporated by reference into **Teper et al.**, it would have been obvious to one skilled in the computer and commerce art at the time the invention was made to use the teachings of **Teper et al.** and **Reeder** to incorporate the capability that the owner of goods may sell access to those goods across a data network, because a data network provides access to a very large potential customer base for the purchasing of the owner's goods. **Reeder** and **Teper et al.** do not teach the owner may instantaneously and simultaneously display across the network multiple differing prices of the same good or classes of goods depending upon the alternative pricing requirements of other clients of the system as transferred by the system.

However, **Reuhl et al.** teaches an ability to automatically implement prices responses to market changes, on a product-by-product, market-by-market basis, and the system is suitably an enterprise -wide system and price changes are directed on a market-by-market basis (col. 6 lines 18-44). Therefore, it would have been obvious to one of ordinary skill in the computer art at the time of applicant's invention to modify the teachings of **Teper et al.** and **Reeder** with the teachings of **Reuhl et al.** to include the capability to sell access to goods across a data network such that the owner may instantaneously and simultaneously display across the network multiple differing prices of the same good or classes of goods depending upon the alternative pricing requirements of other clients of the system as transferred by the system, e.g., geographic locations

Art Unit: 2765

of the users, because market competition in specific market areas or the additional expenses of advertising, presentation, shipping, and handling costs may effect the costs to the owner of goods.

Claim 19 is written as a method and contains essentially the same limitations as claim 2; therefore, the same rejection is applied.

7. Claims 8-10 and 25-27 are rejected under 35 U.S.C. 103(a) as being unpatentable over **Teper et al.** (Patent No. 5,815,665) as applied to claim 1 above, and further in view of **Payne et al.** (Patent No. 5,715,314) and **Willens et al.** (Patent No. 5,889,958).

As per claim 8, **Teper et al.** teach [system] which employs the Internet's Hyper-Text Transfer Protocol (HTTP) (col. 11 lines 34-45). **Teper et al.** does not teach [system] has appending means adapted to appending to or including in a Uniform Resources Locator, or in a Request/Response Header, a sequence of alphanumeric characters which includes said authenticatable token. However, **Payne et al.** teach [system] which employs the Internet's Hyper-Text Transfer Protocol (HTTP), and has appending means adapted to appending to or including in a Uniform Resources Locator, or in a Request/Response Header, a sequence of alphanumeric characters which includes said authenticatable token (col. 3 lines 19-22; col. 5 lines 26-46). Therefore, it would have been obvious to one of ordinary skill in the computer and electronic commerce art at the time of the invention to combine the teachings of **Teper et al.** and **Payne et al.** to teach a system which employs the Internet's Hyper-Text Transfer Protocol (HTTP), and has appending means adapted to appending to or including in a Uniform Resources

Art Unit: 2765

Locator (URL), or in a Request/Response Header, a sequence of alphanumeric characters which includes said authenticatable token, because this provides security to the user information while providing the user the capability to make purchases from service providers over secure and unsecured communications links.

As per claim 9, **Teper et al.** teach an acceptance means by which a client's token is accepted by a system member from whom to receive services or goods across a data network, and is instantaneously submitted to the system's common service point (fig. 5 [80, 82, 84]; col. 15 lines 57-61; col. 16 lines 6-8 and 19-22;).

As per claim 10, **Teper et al.** does not teach utilizing the User Datagram Protocol. However, **Willens et al.** teach utilizing the User Datagram Protocol in conjunction with an access control system and process and firewall filtering of a server (col. 6 lines 10-20). Official Notice is taken that the User Datagram Protocol is known in the computer art. Therefore, it would have been obvious to one skilled in the computer and medical art to combine the teachings of **Teper et al.**, **Willens** and known computer and electronic shopping art to incorporate the capability for implementing an acceptance means incorporating the User Datagram Protocol, because of the obvious advantages of very small data packet size requirements in an environment where data packet size affects the reliability and protocol requirements of the system.

Art Unit: 2765

Claim 25 is written as a method and contains essentially the same limitations as claim 8; therefore, the same rejection is applied.

Claim 26 is written as a method and contains essentially the same limitations as claim 9; therefore, the same rejection is applied.

Claim 27 is written as a method and contains essentially the same limitations as claim 10; therefore, the same rejection is applied.

---

**Final Action (rejections repeated):**

***Response to Amendment***

8. As per the rejection of claims 1-34 under 35 U.S.C. § 103, the rejections are maintained due to applicants' unpersuasive argument as set forth in section 9 of this action and the requirements of MPEP 1608 and 2308.01, as quoted below.

9. The amendment filed on 1 October 1999 and the supplemental amendment filed 7 October 1999 are not sufficient to overcome the **Teper et al.** (Patent No. 5,815,665), **Reeder** (Patent No. 5,852,812) and **Reuhl et al.** (Patent No. 5,873,069). references.

Applicants' original claims are claims 1-34. Applicants added, by amendment, the new claims 35-80, which were copied from the 46 claims of **Teper et al.**, see pg. 3 last paragraph of paper #8. Claims 1-80 are now pending.

Art Unit: 2765

10. Applicants faxed 2 new references to USPTO for inclusion into the application. These were copies of claims only from patents #5,909,492 and 5,899,980. This is improper procedure as the entire patent of each must be considered. Examiner has included and considered the entire patents.

11. This action is responsive to the amendment A filed 1 October 1999, and the supplemental amendment B filed 7 October 1999.

*Drawings*

12. This application has been filed with informal drawings which are acceptable for examination purposes only. Formal drawings will be required when the application is allowed.

*Claim Rejections - 35 USC § 102*

13. Claims 35-80 are rejected under 35 U.S.C. 102(e) as being anticipated by **Teper et al.** (U.S. Patent No. 5,815,665).

Applicants state in paper #8 at pg. 3 last paragraph that these claims are copied from **Teper et al.** Therefore, they are rejected as being unpatentable over prior art (**Teper et al.**).

*Claim Rejections - 35 U.S.C. § 103*

Art Unit: 2765

14. Claims 1-34 are rejected as being unpatentable over the prior art, as stated in the following sections.

15. Claims 1-34 were rejected under 35 U.S.C. 103(a) in the First Action (see Paper #4). Applicants have failed to provide reasonable justification for allowance of these claims over prior art. Therefore, the rejection of claims 1-34 as stated in paper #4, and repeated above, is maintained.

#### *Response to Arguments*

16. The arguments filed in the amendment filed on 1 October 1999 and the supplemental amendment filed 7 October 1999 by applicants were fully considered but were not persuasive.

17. As per the applicants' request for an interference with **Teper et al.**, MPEP 2308 states

**37 CFR 1.608. Interference between an application and a patent; prima facie showing by applicant.**

(b) When the effective filing date of an application is more than three months after the effective filing date of a patent, the applicant, before an interference will be declared, shall file evidence which may consist of patents or printed publications, other documents, and one or more affidavits which demonstrate that applicant is prima facie entitled to a judgment relative to the patentee and an explanation stating with particularity the basis upon which the applicant is prima facie entitled to the judgment. Where the basis upon which an applicant is entitled to judgment relative to a patentee is priority of invention, the evidence shall include affidavits by the applicant, if possible, and one or more corroborating witnesses, supported by documentary evidence, if available, each setting out a factual description of acts and circumstances performed or observed by the affiant, which collectively would prima facie entitle the applicant to judgment on priority

Art Unit: 2765

with respect to the effective filing date of the patent. To facilitate preparation of a record (§ 1.653(g)) for final hearing, an applicant should file affidavits on paper which is 21.8 by 27.9 cm. (8 ½ x 11 inches). The significance of any printed publication or other document which is self-authenticating within the meaning of Rule 902 of the Federal Rules of Evidence or § 1.671(d) and any patent shall be discussed in an affidavit or the explanation. Any printed publication or other document which is not self-authenticating shall be authenticated and discussed with particularity in an affidavit. Upon a showing of good cause, an affidavit may be based on information and belief. If an examiner finds an application to be in condition for declaration of an interference, the examiner will consider the evidence and explanation only to the extent of determining whether a basis upon which the application would be entitled to a judgment relative to the patentee is alleged and, if a basis is alleged, an interference may be declared.

Under 37 CFR 1.608, *an applicant seeking to provoke an interference with a patent is required to submit evidence which demonstrates that the applicant is prima facie entitled to a judgment relative to the patentee. Evidence must be submitted when the effective filing date of the application is more than 3 months after the effective filing date of the patent.* The evidence may relate to patentability and need not be restricted to priority, but if the evidence shows that the claims of the application are not patentable, the claims in the application will be rejected. The applicant can file a request for reexamination of the patent, if applicable.

#### **2308.01 Patent Has Filing Date Earlier Than Application**

When an applicant attempts to provoke an interference with a patent, the examiner must determine the effective filing dates of the application and of the patent; only the patent's effective United States filing date will be considered. Any claim of foreign priority by the patentee under 35 U.S.C. 119 will not be taken into account when determining whether or not an interference should be declared, in order to be consistent with the holding in *In re Hilmer*, 359 F.2d 859, 149 USPQ 480 (CCPA 1966), that the effective date of a United

Art Unit: 2765

States patent as a reference is not affected by the foreign filing date to which the patentee is entitled under 35 U.S.C. 119. If the patentee is determined to be entitled to the benefit of a prior United States application as to claimed subject matter involved in the interference, that application must be listed on the PTO-850 form (see MPEP § 2309).

Also, the following requirements apply:

If the effective filing date of the application is more than 3 months after the effective filing date of the patent, 37 CFR 1.608(b) requires that the applicant must file (1) evidence, such as patents, publications and other documents, and one or more affidavits or declarations which demonstrate that applicant is prima facie entitled to a judgment relative to the patentee, and (2) an explanation stating with particularity the basis upon which the applicant is prima facie entitled to the judgment.

If an applicant is claiming the same invention as a patent which has an earlier effective United States filing date but there is not a statutory bar against the application, and the applicant has not submitted the items required by 37 CFR 1.608(a) or (b), as appropriate, the application should be rejected under 35 U.S.C. 102(e) /103. A statement should be included in the rejection that the patent cannot be overcome by an affidavit or declaration under 37 CFR 1.131 but only through interference proceedings. Note, however, 35 U.S.C. 135(b) and MPEP § 2307. The applicant should also be advised that an affidavit under 37 CFR 1.608(b) or evidence and an explanation under 37 CFR 1.608(b), as appropriate, must be submitted and it should be stated, if applicable, that the patentee has been accorded the benefit of an earlier U.S. application.

18. The following priority dates were used in this evaluation:

- **Teper et al. (5,815,665)** - filing date: Apr. 3, 1996, priority date: Apr. 3, 1996

Art Unit: 2765

- Applicants' filing (09/036,236) - filing date: Mar. 6, 1998, priority date: Mar. 7, 1997

based on provisional application #60/040,223

19. Applicants have not submitted affidavits as required by MPEP, as quoted in section 17 above.

20. Additionally, as required by MPEP per para 17 above, applicant is notified that the patent cannot be overcome by an affidavit or declaration under 37 CFR 1.131 but only through interference proceedings. Note, however, 35 U.S.C. 135(b) and MPEP § 2307. Also, an affidavit under 37 CFR 1.608(b) or evidence and an explanation under 37 CFR 1.608(b), as appropriate, must be submitted and it should be stated, if applicable, that the patentee has been accorded the benefit of an earlier U.S. application.

21. Based on the MPEP, as stated in paragraph 17 above, and sections 18-20 above, **an interference is not granted** to applicants. Examiner rejects applicants' claims under 35 U.S.C. 103 as being unpatentable over **Teper et al.** for the reasons stated in sections 10, 11 and 12 above. Applicants' request for an interference with **Teper et al.** is not supported by the documentation provided by the applicants, as required by the MPEP which is quoted above.

---

Art Unit: 2765

*Conclusion*

22. All claims are drawn to the same invention claimed in the parent application prior to the filing of this Continued Prosecution Application under 37 CFR 1.53(d) and could have been finally rejected on the grounds and art of record in the next Office action. Accordingly, **THIS ACTION IS MADE FINAL** even though it is a first action after the filing under 37 CFR 1.53(d). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

23. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Forest Thompson whose telephone number is (703) 306-5449. The examiner can normally be reached Monday-Friday from 7:00 AM to 3:30 PM.

Art Unit: 2765

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Wynn Coggins, can be reached at (703) 308-1344.

The fax numbers for the organization are as follows:

After Final: (703) 746-7238

Official: (703) 746-7239

Non-Official/Draft: (703) 746-7240

Any inquiry of a general nature or relating to the application or processing should be directed to the receptionist whose telephone number is (703) 305-3900.



WYNN COGGINS  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 2100

January 9, 2002 /FOT  
*fot*